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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/082,935

10/22/2001

Dieter Hoi

AT000062

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24737

7590

02/15/2006

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

AUGUSTIN, EVENS J

ART UNIT

PAPER NUMBER

3621

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,935

Applicant(s)

HOI ET AL.

Examiner

Evans Augustin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-15 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Amendment

This is in response to an amendment file on 12/1/2005 for letter for patent filed on 10/22/2001. In the amendment, claims 1-13 have been amended. Claims 14-15 have been added. Claims 1-15 are pending in the letter.

Response to Arguments

1. The United States Patent and Trademark Office (USPTO) has fully considered the applicant's arguments filed on 12/1/2005, but has not found those arguments to be persuasive.

Applicant argues that the prior arts fail to teach the aspects of a pay-per-use licensing system for software. The USPTO respectfully disagrees with applicant's characterization of the prior arts. The applicant argues that the prior art fail to teach the aspect pay per use after the content has been experienced or uses. In particular, Constant et al. teaches an invention that relates to a pay-per-use system. According to Constant et al., only when incremental performance is required is the user charged for the capability (column 3, lines 17-19). Users of the pay-per-use system are only charged for actual usage time (column 9, lines 3-4). The system includes a timer that keeps track of the user usage time (column 7, lines 3-4). Therefore, the licensee pays the licensor after the user has actually used the program.

Status of Claims

2. Claims 1-15 have been examined.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cilurzo et al. (U.S 6434526), in view of Constant et al. (U.S 5412575).

During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed. In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)

The office interprets the invention as licensing for software application in which the owner/distributor of the software gets compensated for on a pay per usage basis. In other words, whenever the software product gets used, licensing requirement gets reconciled and payment is made for the usage of the software. In this application, the software product happens to be voice/speech recognition software that translates voice/speech into text.

As per claims 1-13, Cilurzo et al. disclose an invention that relates to communication networks and more particularly to the provision of a speech recognition capacity to special application program services provided on a network. The invention includes:

- Providing on a network software with speech recognition capability (column 2, lines 49-51)
- A server receiving voice input from the user - the server processes the voice input and transmits back text transcription of the voice input (column 2, lines 22-37)
- The fee determination for the software being used to transcribe voice-to-text process can be a monthly rental fee, or a service price for the use of the software (column 2, lines 38-40)
- Speech data is inputted into a service server that does processing and transmitting the text output back to the user (column 4, lines 1-56)
- Determining a number of words in dictation (column 4, lines 42-48)
- The system also uses programs with word processing capabilities such as word processor and Lotus Notes (column 5, lines 17-20). Word processors inherently contain editing functions or operations

Cilurzo et al. did not explicitly describe a method/system in which the voice-to-text transcription software is licensed on a pay per usage basis.

However, Constant et al. describe an invention that relates to a software pay per use licensing system. In a computer network, a user can access a software package by debiting credits from a pool of usage credits. Different software packages or groups of packages would have their own usage credit pools and might cost different number credits per unit of time or

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usage. Under this system, there is no set number of users that can access the software package at one time. Rather, the use of a software package is only limited by the number of usage credits available for a particular software package (column 9, lines 54-67, column 10, lines 1-12).

Therefore, it would have been obvious for one of ordinary skill in the art at the time of the applicant's invention to construct a system in which the voice-to-text transcription software is licensed on a pay per usage basis. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to implement a system in which the voice-to-text transcription software is licensed on a pay per usage basis pay-per-use creates an annuity flow of revenues allowing the initial capital cost of the test equipment to be greatly reduced, and the loss of revenue to the transcription services to be replaced over time with the annuity "expense" payments associated with actually using the transcription software (column 9, lines 37-42).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evens Augustin whose telephone number is 571-272-6860. The examiner can normally be reached on Monday thru Friday 8 to 5 pm.

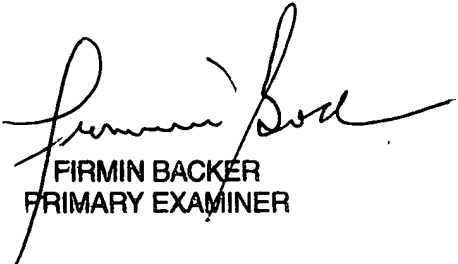
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Trammel can be reached on 571-272-6712.

Any response to this action should be mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is 571-272-6584.

Evens J. Augustin
February 9, 2006
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FIRMIN BACKER
PRIMARY EXAMINER